*THE HON'BLE Ms. JUSTICE G. ROHINI

+ **WRIT PETITION No.11365 OF 2004**

% 14/02/2006

Mr. Ch. Vijaya Mohan. .. Petitioner.

Vs.

$ 1. The Deputy Commissioner of Prohibition and Excise,

(Hyderabad Division), Hyderabad and two others. .. Respondents.

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> Head Note:

! Counsel for the petitioner : Sri P. Balaji Varma

^ Counsel for the respondents : Govt. Pleader for Proh. & Excise

Cases referred :

- NIL -

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.11365 OF 2004

14th February, 2006

Between:

Mr. Ch. Vijaya Mohan. .. Petitioner.

And

The Deputy Commissioner of Prohibition and Excise,

(Hyderabad Division), Hyderabad and two others. .. Respondents.

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.11365 OF 2004

ORDER:

The petitioner claims to be the owner of a Tanker bearing No. AP 16-U-4694. While the said vehicle was transporting liquor from Madras to Yeddumailaram in Medak District, it was intercepted and seized on 13.06.1995 at B.V. Palam village, Nellore District on the allegation that the vehicle was involved in an offence punishable under Section 34 (a) of the A.P. Excise Act, 1968 and Section 8 (b) of the A.P. Prohibition Act, 1995. Subsequently, having conducted due enquiry by order dated 24.01.2000, the vehicle in question was confiscated and the same was confirmed in appeal by the Commissioner of Prohibition & Excise, Hyderabad vide proceedings dated 18.03.2001. Aggrieved by the same, the petitioner filed W.P.No.22245 of 2001. Though this Court declined to interfere with the order of confiscation, the Writ Petition was disposed of directing the respondents therein to consider the application of the petitioner for compounding the offence in accordance with the

provisions under the Andhra Pradesh (Compounding of Offences) Rules, 2000. In pursuance thereof, the petitioner made an application before the 2nd respondent - Deputy Commissioner of Prohibition & Excise, Guntur praying for compounding the offence. The said application was rejected by the 2nd respondent by order dated 29.11.2001 on the ground that the quantity of the seized stock was more than the quantity specified under the statutory rules, and therefore, his request for compounding the offence cannot be considered. The said order was communicated to the petitioner by the 3rd respondent - Prohibition and Excise Inspector, Sullurupet vide notice dated 30.04.2004, calling upon him to handover the vehicle in question immediately. Hence, this Writ Petition seeking a declaration that the action of the respondents in not releasing the vehicle by collecting the compounding fee under Section 11-B of the A.P. Prohibition Act, 1995 as arbitrary and illegal.

I have heard the learned counsel for both the parties and perused the material on record.

Section 11-B of A.P. Prohibition Act, 1995 (for short "the Act") which provides for compounding of offences runs as under:

"11-B Compounding of Offences:

> (1) The Collector or any Prohibition and Excise Officer specially empowered in that behalf may accept from any person who is reasonably suspected of having committed an offence falling under clause (a) or sub-clause (i) of clause (b) or the proviso to sub-clause (ii) of clause (b) as it was in force, of Section 8 or Section 9, a sum of money **as may be prescribed** but not exceeding the maximum fine which can be imposed for the offence under the provisions of Act, by way of compensation for the offence which may have been committed **and in all cases in which any property has been seized as liable for confiscation under this Act, may release the same on payment of the value thereof as estimated by such officer.**" (emphasis supplied).

A bare reading of sub-section (1) of Section 11-B shows that those offences falling under Section 8 (a), Section 8 (b) (i) and the proviso to Section 8 (b) (ii) as it was in force or Section 9 are compoundable on accepting a sum of money **as may be prescribed** but not exceeding the maximum fine which can be imposed for the offence under the provisions of the Act, by way of compensation.

In exercise of the powers conferred under sub-section (1) of Section 33 of the Act read with sub-section (1) of Section 11-B, the Governor of Andhra Pradesh under G.O.Ms.No.496, Revenue (Ex.III) Department, dated 25-07-2000 made A.P.

Prohibition (Compounding of Offences) Rules, 2000 (for short “the Rules”). The said Rules in detail provide for the Officers empowered to compound the offences as well as the procedure for compounding of the offences. That apart, Rule 5 of the said Rules read with Schedule to the Rules provides for the minimum compounding fee payable in respect of the offences under Section 8 (a), Section 8 (b) (i), the proviso to Section 8 (b) (ii) and Section 9 of the Act.

It is relevant to note that Section 8 (a) provides for punishment for consumption of liquor except in accordance with the provisions of the Andhra Pradesh Prohibition Act, 1995 or the terms of any rule, notification order or permit issued thereunder. Section 8 (b) provides for punishment for possessing, collecting, buying, selling, or transporting any liquor without any licence or permit granted under the A.P. Excise Act, 1968. Sub-clause (i) of Section 8 (b) provides that where the liquor involved in the offence is less than the quantity as may be notified, the punishment shall be imprisonment for a term which shall not be less than six months, but which may extend up to three years or with fine. Similarly sub-clause (ii) of Section 8 (b) provides for the punishment where the liquor involved in the offence is not less than the quantity notified, with imprisonment for a term which shall not be less than one year, but it may extend up to five years and with fine. Under the proviso to sub-clause (ii) of Clause (b) any person in possession of a quantity of 375 ml or less and who is a first offender shall be punished with imprisonment for a term which may extend up to three months and with fine, which may extend up to Rs.5,000/-.

It is also relevant to note that in terms of Section 8 (b) (i) of the Act, a notification was issued under G.O.Ms.No.68 Revenue (EX.II) Department, dated 17.01.1996 notifying the quantities of liquor for the purpose of deciding the punishment under Section 8 (b) of the Act. The said notification was subsequently amended under G.O.Ms.No.801, Revenue (Ex.III) Department, dated 13-11-2000 and G.O.Ms.No.1084, dated 21.12.2004.

On a reading of Rule 5 of the Rules read with the schedule as well as the notification issued under Section 8 (b) (i) of the Act, it is clear that in respect of the offences falling under Section 8 (a) or Section 8 (b) (i) or the proviso to Section 8 (b)(ii) or Section 9 the compounding fees has to be accepted not less than the minimum fees prescribed under the Schedule to the Rules and not exceeding the maximum fine which can be imposed for those offences under the provisions of the Act. So far as

minimum compounding fees prescribed for offences under Section 8 (b)(i) and the proviso to Section 8 (b) (ii) under the Schedule is concerned, Column 3 of the Schedule as well as the notification issued under Section 8 (b) (i) show that the minimum compounding fees specified thereunder is applicable only where the liquor involved is less than the quantity specified in the Schedule.

In the case on hand, the vehicle in question was found to be carrying liquor illegally. It is not in dispute that the total quantity seized was 215.25 litres i.e., exceeding the quantity specified under the schedule to the Rules. Obviously, on the said ground the 2nd respondent passed the impugned order dated 29-11-2001 rejecting the request of the petitioner for compounding the offence.

The learned Counsel for the petitioner, however, contends that compounding of offences under Section 11-B of the Act cannot be rejected on the ground that the quantity of the seized liquor involved in the offence exceeds the quantities specified under the schedule to the Rules. The learned counsel submits that the quantities were restricted under the Schedule only for the purpose of fixing the minimum compounding fees and that there is no bar under the Act for compounding the offence even where the quantity of seized liquor exceeds the limits prescribed.

On a careful reading of Section 11-B of the Act, I find force in the submission of the learned counsel for the petitioner. It is to be noted that Section 11-B of the Act is in two parts. The first part provides for compounding of offences falling under Section 8 (a) & (b) and Section 9 of the Act accepting a sum of money as prescribed under the Rules, under which the minimum compounding fees has been prescribed for certain offences, but not exceeding the maximum fine which can be imposed for the offence under the provisions of the Act. The latter part of Section 11-B in clear terms states that in all cases in which any property has been seized and liable for confiscation may be released on payment of the value thereof, as estimated by the Collector or any Prohibition & Excise Officer specially empowered in that behalf. It is clear that the latter part deals with the offences, which do not fall under the first part. So far as the offences falling under the latter part of Section 11-B are concerned, the Rules are not applicable and it provides for release of any property that has been seized and liable for confiscation under the Act on payment of the compounding fees as estimated by the officer.

As a matter of fact, even the quantities specified under the Schedule to the

Rules or G.O.Ms.No.801 dated 13.11.2000 are only for the purpose of deciding the minimum compounding fees, and it is not correct to conclude that the other offences are not compoundable at all. Hence, there is no reason to reject the request for compounding any offence on the ground that the quantity of liquor involved in the offence exceeds the quantities that are mentioned under the schedule to the Rules, or G.O.Ms.No.801 dated 13.11.2000.

For the aforesaid reasons, the tanker in question which was seized and was confiscated under the Act for having indulged in an offence involving 215.25 litres of liquor can be released in terms of the latter part of Section 11-B of the Act on payment of the compounding fee as estimated by the concerned officer.

The fact that the 2nd respondent is the competent officer to estimate the compounding fee has not been disputed by the learned Government Pleader. In the circumstances, the 2nd respondent ought to have estimated the compounding fee payable and informed the petitioner. The 2nd respondent apparently failed to note the scope and purport of Section 11-B of the Act and erroneously concluded that the offence cannot be compounded.

Accordingly, the order impugned which is illegal is hereby set aside and the Writ Petition is disposed of with a direction to the 2nd respondent to consider the request of the petitioner for compounding the offence afresh in the light of the observations made above, and to pass appropriate orders in accordance with law, as expeditiously as possible, preferably within a period of six (6) weeks from the date of receipt of this order.

The Writ Petition is accordingly disposed of. No costs.

(G. ROHINI, J.)

14th February, 2006.

Note:- LR copy to be marked.

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